

## EXHIBIT B

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NURSAN METALURJI ENDUSTRISI, A.S.,

Plaintiff,

Case No.: 07 CIV 7687 (GBD)

-against-

M/V "TORM GERTRUD" her engines, tackle,  
boilers, etc. *in rem*, M/V "NEW FLAME" her engines,  
tackle, boilers, etc. *in rem*,  
A/S DAMPSKIBSSELSKABET TORM, TRANSMAR  
SHIPPING CO. S.A., GLADIATOR NAVIGATION S.A.,  
*in personam*,

**DECLARATION OF  
JULIAN RICHARD  
TRIAY, ESQ.**

Defendants.  
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Pursuant to 28 U.S.C. § 1746, JULIAN RICHARD TRIAY, declares as follows:

1. I am a partner in the law firm of Triay & Triay, solicitors of Gibraltar, with an office at 28 Irish Town, Gibraltar.
2. I have been a solicitor in Gibraltar for thirteen (13) years, having been called to the bar (i.e. admitted to practice) in 1994. I have been engaged in general practice ever since, with a specific concentration in maritime and property law.
3. I make this Declaration in support of the defendant A/S DAMPSKIBSSELSKABET TORM's motion to dismiss the captioned action inasmuch as New York is a not a convenient forum.
4. The collision of the M.V. NEW FLAME and the M.T. TORM GERTRUD, occurred in Gibraltar waters on 12 August 2007. Two actions stemming from the collision are now pending in the courts of Gibraltar: Claim No. 2007/AJ-03 between TORM and the plaintiff herein, as owners of the cargo on board the NEW FLAME, and Claim No. 2007/A.J/002\_ between TORM and the owners of the NEW FLAME. Messrs Triay and Triay are instructed as

legal advisers to TORM in both actions and I have conduct of both actions, assisted by Edward Morland.

5. With respect to the collision, I attach hereto as Exhibit "A" a true and correct copy of the Government of Gibraltar's Press Release No. 177/2007 issued on 12 August 2007.

6. On 12 August 2007, the movements of the NEW FLAME and the TORM GERTRUD were being tracked by radar by the UK Ministry of Defence Maritime Data Centre, Windmill Hill Signal Station located in Gibraltar. Real time records of those radar observations are maintained by the Maritime Data Centre

7. Following the collision, the Captain of the NEW FLAME was arrested in Gibraltar and charged with a violation of Gibraltarian maritime law, specifically Section 101 E of the Merchant Shipping Act. If convicted, he could face a £2000 fine and/or two years imprisonment.

8. With respect to the collision, I attach hereto as Exhibit "B" a true and correct copy of the letter sent to me by Mr. Tony Nation, Maritime Administrator for the Gibraltar Maritime Administration Government of Gibraltar, dated 29<sup>th</sup> November 2007, concerning the official Gibraltar investigation. As can be seen therefrom, a formal report of that governmental investigation will issue in due course.

9. As part of the official governmental investigation, various officer and crewmembers of the NEW FLAME were duly questioned/interviewed by officials of the Gibraltar Maritime Administration. In addition, various NEW FLAME officers and crew were interviewed by The Royal Gibraltar Police. Similarly, as part of the official investigation, the Gibraltar Maritime Administration boarded the TORM GERTRUD and duly questioned its officers and crewmembers.

10. With respect to the two actions now pending in the courts of Gibraltar, (referred to in ¶ 4, supra) the law and procedure of Gibraltar will apply. Gibraltar law closely follows the law of England, while procedurally, section 6 of the Gibraltar Supreme Court Rules provides that where no other provision is made by the Rules or by any Act of the Gibraltar Parliament or any other regulation, the rules from time to time in force in the English High Court relating to admiralty actions shall apply to all civil proceedings in Gibraltar. I confirm there is no enacted provision in Gibraltar regulating the proceedings of this nature and so the English Civil Procedure Rules apply to the proceedings in Gibraltar. The Gibraltarian courts are fully empowered to issue subpoenae to compel the attendance of any unwilling witnesses. Indeed, the subpoenae power of the court is commonly invoked. The cost of such subpoenae is *de minimis*.

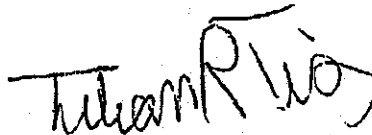
11. The trial of the two actions will be without a jury. I estimate that the respective trial in each case can be held within twelve (12) months. The relevant fact witnesses for these actions include, *inter alia*, the divers,, surveyors, inspectors, salvors, tug crews and UK Defence Ministry personnel, as well as the respective crews and officers of the NEW FLAME and TORM GERTRUD.

12. Additionally, Government investigators' reports will be available as evidence. Whilst section 12 Gibraltar Merchant Shipping (accident Reporting and Investigation) Regulations 2006) provides that the witness statements, records and reports collected by investigators on which their reports are based, should not be used for purposes other than the investigation, section 12(3) of this Regulation provides that the Court may make an order for their disclosure if the interests of justice outweigh any prejudice to the investigation, future investigations or relations with another state. It is submitted that the Courts ability to order disclosure of records of investigation would include the ability to call the accident investigators as witnesses, if necessary.

Such an order is much more likely to issue for cases being heard in Gibraltar, where the judge is empowered to summon the makers of the report to provide clarification thereof.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Dated: December 5, 2007  
Irish Town, Gibraltar



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JULIAN RICHARD TRIAY

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**Exhibit A**



**GOVERNMENT OF GIBRALTAR  
PRESS OFFICE  
No.6 Convent Place  
Gibraltar  
Tel:70071; Fax: 74524**

**PRESS RELEASE**

No.177/2007

Date: 12<sup>th</sup> August 2007

**COLLISION BETWEEN VESSELS "NEW FLAME AND "TORM GERTRUDE"**

The Panamanian cargo Vessel "New Flame", carrying a cargo of scrap metal and the Danish Product Tanker "Torm Gertrude" collided in Gibraltar waters, 1 kilometre south of Europa Point, Gibraltar at 05.55 hrs on Sunday 12<sup>th</sup> August 2007.

The "New Flame" had just left Gibraltar bound for Turkey. The "Torm Gertrude" was heading inbound for the Port of Algeciras in Spain from the Eastern Mediterranean.

As a result of the collision both vessels were damaged. The "Torm Gertrude" proceeded to the Port of Algeciras in Spain. The vessel is currently in a safe condition.

The damage sustained by the "New Flame" resulted in her taking in water with Nos. 1 and 2 holds being completely flooded. This caused the vessel to start sinking by the bow, at which point the crew of 23 abandoned ship safely.

The vessel then drifted to a nearby reef, where it came to rest. The current situation is that the bow of the vessel is resting on the reef and the remainder of the vessel, from amidships to the stern, is above the surface of the water.

The Gibraltar Port Authority activated its Emergency Response Plan and deployed the necessary resources to the scene of the incident.

The Gibraltar Port Authority have deployed divers to the vessel to inspect the damage and a full on-board inspection is being carried out by the Gibraltar Maritime Surveyors. Options are being considered for the removal of the vessel's fuel to avoid any oil spill. Anti-oil spill resources are on standby alongside the vessel in case the need arises.



The Gibraltar Maritime Administration has commenced an investigation, into the collision and also into how the vessel "New Flame" departed from the Port of Gibraltar without the necessary clearance. Such investigations are standard procedure in these incidents.

The Minister for Shipping, The Hon Joe Holliday, was immediately informed of the incident and visited Europa Point to view the vessel at first hand. He has since been in attendance at the Gibraltar Port Authority Incident Control Room. The Minister commented "This collision of two vessels is a serious incident. All the necessary resources are being deployed to address the situation and to ensure environmental safety. Once again, as in the case of the "Samothraki" incident, I would like to express my satisfaction at the magnificent and professional way that the Gibraltar Port Authority personnel and other private sector operators are responding to this incident. The Chief Minister who is currently away from Gibraltar on vacation, is being kept fully informed."

Further information will be issued as it becomes available.

**Exhibit B**



	<p><b>GOVERNMENT OF GIBRALTAR</b> Ministry of Maritime Affairs Maritime Administration Watergate House 2/8 Casemates Square Gibraltar</p>	
		<p>Tel: + 350 46862 / Fax: + 350 47770 e-mail: <a href="mailto:maritadmin@gibtelecom.net">maritadmin@gibtelecom.net</a></p>

29<sup>th</sup> November 2007

Our ref: TN/07/566 L  
Your ref:

Mr Julian Triay  
Triay & Triay  
28 Irish Town  
Gibraltar

Dear Mr Triay

**Re: Accident Investigation into the Collision between the 'New Flame and the 'Torm Gertrude' – Bay of Gibraltar 12<sup>th</sup> August 2007**

Further to our recent telephone conversation, I can confirm that following the collision between the above referenced vessels; an accident investigation was initiated on the same day.

The investigation is a joint one involving the Danish and Panamanian Maritime Authorities, with the Gibraltar Maritime Administration taking the role as the lead investigative State. The report is being compiled under the requirements of the Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2006 and in accordance with IMO Resolution A.849(20)

The final report will be presented to the Minister before being submitted to IMO. At this stage, at the Ministers discretion, it may be released into the public domain. It is expected that the report should be completed by March 2008.

I trust this helps to answer your question, however if I may be of further assistance, please do not hesitate to contact this office.

Yours sincerely



Tony Nation  
Maritime Administrator

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